

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GERALDINE VICTORIA HORST,

Defendant-Appellee.

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UNPUBLISHED  
October 15, 1999

No. 215023  
Oakland Circuit Court  
LC No. 98-160085 FH

Before: Hoekstra, P.J., and O'Connell and R. J. Danhof\*, JJ.

PER CURIAM.

Defendant was charged with possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(a)(v). The district court found probable cause to support the charge and bound defendant over for trial. However, the circuit court found the evidence insufficient to support a finding of probable cause and dismissed the charge. Plaintiff appeals the circuit court's order. Because we find that the district court did not abuse its discretion in finding probable cause to believe that defendant committed the alleged offense, we reverse the circuit court's decision and remand this case for trial.

Neither party disputes the essential facts of this case. Defendant was arrested after police searched her apartment and found a blackened spoon that contained cocaine residue. Police also found syringes in the apartment. When police first entered defendant's apartment, they found defendant in the same area of the apartment where they found the spoon. A second woman was sleeping in another room. At the preliminary examination, one of the investigating officers testified that defendant claimed that the drugs belonged to the other woman, that the other woman had used the spoon to melt the cocaine, and that they had each injected the drugs using defendant's syringes. Based on this testimony, the district court found that there was probable cause to believe that defendant possessed the cocaine and bound defendant over for trial.

Defendant then moved to have the circuit court quash the bindover, arguing that the prosecutor had merely shown that defendant possessed the drugs as a precursor to consuming them. Pointing to

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

prohibition era case law, defendant maintained that she could not be convicted of possession when she only possessed the drugs incident to their consumption. See *People v Ninehouse*, 227 Mich 480; 198 NW 973 (1924); *People v Leslie*, 239 Mich 334; 214 NW 128 (1927); and *People v Turner*, 390 Mich 7; 210 NW2d 336 (1973) (Brennan, J., dissenting). The circuit court quashed the charges “for the reasons as set forth by Defendant’s counsel previously,” presumably referring to defendant’s argument that her possession was incident to consumption. Here, plaintiff argues that the trial court erred in quashing the charge because there was probable cause to believe that defendant was guilty of possessing cocaine. According to plaintiff, any further inquiry into why defendant possessed the drugs should be left to the fact finder.

We must decide whether the circuit court erred in reversing the district court’s finding of probable cause. When a circuit court reviews a district court’s decision to bind over a defendant for trial, the circuit court must take into account the entire record of the preliminary examination. Further, it may not substitute its judgment for that of the magistrate. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997). Reversal is appropriate only if it appears on the record that the district court abused its discretion. *Id.* An abuse of discretion is found “where an unprejudiced person, considering the facts upon which the court acted, would say there was no justification or excuse for the ruling.” *Id.* In order to review the trial court’s decision to quash, this Court must review the district court’s decision to bind over the defendant, *People v Honeyman*, 215 Mich App 687, 691; 546 NW2d 719 (1996), making our review of the circuit court’s decision essentially de novo.

When deciding whether to bind a defendant over for trial, the district court must find probable cause to believe the defendant has committed the crime. *Id.* at 558. “Probable cause exists where the court finds a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person to believe that the accused is guilty of the offense.” *Id.*

One need not physically possess illegal narcotics to be guilty of possessing it under MCL 333.7403(2)(a)(v); MSA 14.15(7403)(a)(v). *People v Wolfe*, 440 Mich 508, 519-20; 489 NW2d 748 (1992). Possession can be constructive or actual, and ownership is not a prerequisite to possession. *Id.* at 520. Further, more than one person can constructively or actually possess a controlled substance. *Id.* A person has constructive possession of an illegal narcotic when she “had the right to exercise control of the [illegal narcotic] and knew that it was present.” *Id.* A person’s presence at a location where drugs are found does not prove constructive possession; an additional connection between the defendant and the contraband is needed. *Id.* “Any one of various factors may be sufficient under given circumstances to establish this connection. . . . [C]onstructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband.” *Id.* at 520-21. Control of the premises where the drugs were found is one factor to be considered. *Id.* at 522.

Here, the district court found that there was probable cause to bind defendant over for trial because defendant may have been in control of the narcotics. The controlled substance was found in her house, the purifying method left a distinct odor in the house, defendant admitted to injecting herself with cocaine, which had been melted in the spoon, and she admitted to owning the syringe used to inject herself. These facts indicate a sufficient nexus between defendant and the contraband. Therefore, the

district court had reason to believe that a crime had been committed and that there was probable cause to believe that defendant had committed it. Defendant's claim that she merely possessed the drugs incident to using them does not detract from the quantum of evidence establishing probable cause that she first possessed them. Defendant is free to argue at trial that she only possessed the drugs incident to consuming them and to request a jury instruction that reflects this distinction. However, the question of whether one may be convicted for possession of narcotics, where the possession was merely incident to consumption, is not ripe for review here. The cases cited in defendant's brief are procedurally distinct from the instant case: in each case, the defendant had already been tried and convicted of possession. Here, we are only concerned with finding whether the district court abused its discretion in finding probable cause to believe that defendant was guilty of possession under the statute. For the reasons discussed above, we find that the district court properly bound defendant over for trial and the trial court erroneously granted defendant's motion to quash.

Reversed and remanded for trial. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

/s/ Robert J. Danhof